

LITIGATION ROSTER

PROPERTY TAX

FEBRUARY 2013

**Property Tax
FEBRUARY 2013**

NEW CASES

Case Name

Court/Case Number

None

CLOSED CASES

Case Name

Court/Case Number

None

Please refer to the case roster for more detail regarding new and closed cases

PROPERTY TAX
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FEBRUARY 2013

BENNETT, STEPHEN H. v. California State Board of Equalization

Court of Appeal, Third Appellate District, Case No. C070263
Sacramento Superior Court Case No. 34-2011-80000911

Filed – 07/08/11

Plaintiff's Counsel

Stephen Bennett
In Pro Per

BOE's Counsel

Jane O'Donnell
BOE Attorney
Wendy Vierra

Issue(s): Whether BOE violated [Government Code section 15606\(h\)](#), and [15608](#) for failing to bring judicial action against assessors for retroactively applying Part 0.5 of the California Revenue and Taxation Code and improperly instructing assessors to apply Part 0.5 of the CA Revenue and Taxation Code retroactively.

Audit/Tax Period: 2004-2008

Amount: Unspecified

Status: Plaintiff filed a Verified Petition for Writ of Mandate on July 8, 2011. BOE was properly served on August 10, 2011. BOE filed its Demurrer to Petitioner's Petition for Writ of Mandate on September 9, 2011. A hearing is set for November 18, 2011 on the petitioner's Motion to Disqualify the Attorney General from representing the BOE and BOE's Demurrer. At the December 9, 2011 hearing, the Court denied petitioner's Motion to Disqualify the Attorney General. The Court also denied the petitioners' Request for Clarification of the ruling on December 21, 2011. On January 18, 2012, the Court sustained BOE's Demurrer to Petitioner's Petition for Writ of Mandate and denied Petitioner's Motion to Disqualify the Attorney General's Office.

Court of Appeal: Petitioner filed a Notice of Appeal of these order on January 25, 2012. Appellant filed his opening brief on June 16, 2012. BOE's response brief was filed on July 12, 2012. Appellant's response was filed on September 11, 2012. Oral arguments were held on November 13, 2012. On February 5, 2013, the Appellate Court affirmed the trial court's judgment in favor of BOE, and ruled that Appellant shall pay BOE's costs on appeal.

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, et al. v. County of Los Angeles

Court of Appeal, Second Appellate District: B225245
Los Angeles County Superior Court: BC389742
(*Amicus Curiae Brief*)

Plaintiff's Counsel

Kevin J. Moore
Moore & Associates

BOE's Attorney

Kiren Chohan

Issue(s): This appeal involves the assessment of a taxable possessory interest, a leasehold, in tax exempt publicly owned real property. Whether [Government Code section 7510, subdivision \(b\)\(1\)](#) fails to tax a lessee's taxable possessory interest in accordance with the possessory interest's fair market value so as to render the statute's valuation methodology unconstitutional.

Status: The superior court granted defendant LA County's motion for summary judgment, and plaintiff CalSTRS has appealed.

Court of Appeal: The Court of Appeal has asked the BOE to submit an amicus brief. On July 30, 2012, the BOE filed its application to file an amicus curiae brief and its brief in support of Appellant California State Teachers' Retirement System. Oral argument was held on January 8, 2013.

ELK HILLS POWER, LLC v. California State Board of Equalization, et al.

San Diego Superior Court Case No. 37-2008-00097074-CU-MC-CTL

Filed – 12/01/08

Court of Appeal, Fourth Appellate District Case No. D056943

California Supreme Court Case No. S194121

Plaintiff's Counsel

Peter W. Michaels

Law Offices of Peter Michaels

BOE's Counsel

Tim Nader

BOE Attorney

Kiren Chohan

Issue(s): Whether BOE properly included the assumed costs of emissions reductions credits (ERCs) when valuing plaintiff's property under [Revenue and Taxation Code Section 110](#).

Audit/Tax Period: 2004-2008

Amount: Unspecified

Status: The trial court ordered summary judgment in favor of BOE. The Court of Appeal issued a published decision on May 10, 2011, affirming the trial court judgment and awarding BOE its costs on appeal. Elk Hills filed a Petition for Rehearing on May 25, 2011. On June 7, 2011, the Court denied Elk Hills' Petition for Rehearing. On June 20, 2011, Elk Hills Power filed a Petition for Review with the California Supreme Court. On July 7, 2011, CalTax submitted a Request for Depublication of the Court of Appeal Opinion with the California Supreme Court. BOE's Answer to Elk Hills' Petition for Review was filed July 11, 2011. BOE's Opposition to CalTax's Request for Depublication was filed on July 18, 2011. The case is fully briefed.

Supreme Court: The Supreme Court of California accepted the petition for review filed by Elk Hills Power, LLC on August 24, 2011. The case is currently being briefed in the Supreme Court.

NONPROFITS INSURANCE ALLIANCE OF CALIFORNIA; ALLIANCE MEMBER SERVICES, INC. v. County of Santa Cruz; State Board of Equalization, DOES 1-10

Santa Cruz County Superior Court: CV173140

Filed – 5/23/2012

Plaintiff's Counsel

Peter O. Glaessner

Lombardi, Loper & Conant

BOE's Counsel

David Lew

BOE Attorney

Crystal Yu

Issue(s): The issue in this case is whether plaintiffs are entitled to Welfare Organizational Exemptions and Organizational Clearance Certificates (OCC) under [Revenue and Taxation Code section 214\(a\)](#) and [Revenue and Taxation Code section 254.6](#). Plaintiffs are seeking a refund of property taxes from the county, and from BOE, declaratory relief and an order compelling issuance of the OCCs.

Audit/Tax Period:

Amount: \$410,673.38

Status: Nonprofits Insurance Alliance of California served the BOE with a First Amended Complaint to Recover Taxes Levied Against Tax-Exempt Welfare Organizations; Declaratory Relief and to Compel Issuance of Organizational Clearance Certificates Per Revenue and Taxation Code § 254.6. A hearing was held on August 30, 2012. At the Case Management Conference on September 26, 2012, the court set a trial date for June 24, 2013. Discovery continues.

SANTA BARBARA, Assessor for the County of v. Assessment Appeals Board No. 1

California Supreme Court, S205876

Court of Appeal, Second Appellate District: B229656

Santa Barbara County Superior Court: 01244457

(Amicus Curiae Brief)

BOE's Counsel

Stephen Lew

BOE Attorney

Kiren Chohan

Issue(s): The primary issue in the case is the proper valuation of transfers of individual ownership interests in resident-owned mobile home parks. ([Revenue and Taxation Code section 62.1](#)) On April 26, 2011, the Board approved the filing of an amicus brief in this case to support the appellant Santa Barbara County Assessor's position for the purpose of uniformity and to support those assessors that are following BOE's guidance regarding this issue.

Audit/Tax Period: None

Amount: Unspecified

Status: Pending. Appellant County Assessor for Santa Barbara filed Reply Brief on September 29, 2011. The BOE's application to file an amicus curiae brief in support of Appellant County of Santa Barbara was granted by the Court of Appeal on October 17, 2011. Oral argument was held on February 8, 2012. On May 16, 2012, the Court issued a published decision upholding the trial court's decision in favor of Respondents. Appellant's Petition for Rehearing, filed on May 30, 2012, was granted by the Court on June 13, 2012. On August 30, 2012, the Court affirmed the judgment of its decision in favor of Assessment Appeals Board and Rancho Goleta Lakeside Mobileers, Inc., et al., and against appellant Santa Barbara County Assessor.

Supreme Court: Case is being briefed in the Supreme Court. On November 27, 2012, the Supreme Court extended the time to grant or deny review of Appellant's petition for review until January 8, 2013. Appellant's petition for review in the Supreme Court was granted on December 12, 2012. Appellant Assessor for County of Santa Barbara filed its opening brief on the merits on January 14, 2013. BOE's amicus brief is due April 25, 2013.

SPRINT TELEPHONY PCS, L.P. v. State Board of Equalization, et al.

San Francisco Superior Court Case No. CGC-11-511398

Court of Appeal, First Appellate District, Case No. A134533

Plaintiff's Counsel

Richard N. Wiley

Law Offices of Richard Wiley

Filed – 06/01/11

BOE's Counsel

David Lew

BOE Attorney

Kiren Chohan

Issue(s): The issue in this case is whether plaintiff's 2008 Board-adopted unitary value of \$2,039,700,000 is overstated. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2008

Amount: \$9,000,000.00

Status: Sprint PCS served the Board with a First Amended Verified Complaint dated June 23, 2011. Hearing on Defendant-Counties Demurrers took place on October 20, 2011. On December 27, 2011, the Court overruled each of the three demurrers filed by the county defendants. On January 17, 2012, the Court granted the

Counties Ex Parte Application for Stay of Proceedings if the Counties file a Writ of Mandate with Court of Appeal which was filed on February 10, 2012.

Court of Appeal: Upon receipt of Sprint's filing its Opposition to the Petition, the Court had directed the county defendants to file a reply to Sprint's Opposition by March 13, 2012. County Defendant's Petition was denied. Case is returning to the trial court.

Trial Court: Trial is set for October 7, 2013.

JOAN THAYER, IN HER CAPACITY AS MARIN COUNTY ASSESSOR v. Assessment Appeals Board No. 1

(Amicus Curiae Brief)

Court of Appeal, First Appellate District: A134340

Filed – 5/30/2012

BOE's Counsel

None

BOE Attorney

Kiren Chohan

Issue(s): This issue involves whether an "other than original transferor" can avoid a change in ownership when he severs his joint tenancy in favor of a tenancy in common. The superior court found the severance in question was a non-assessable event pursuant to [Revenue and Taxation Code section 62\(a\)](#). The superior court's interpretation is inconsistent with the BOE's longstanding advice regarding the proper assessment of joint tenancies. The Marin County Assessor filed an appeal and has asked the BOE to file an amicus brief in support of its position.

Audit/Tax Period: None

Amount: Unspecified

Status: Court of Appeal: BOE will file an amicus brief in support of Appellant Marin County Assessor. The On August 22, 2012, the Court granted BOE's application to file its amicus curiae brief (filed on August 21, 2012) in support of Appellant Marin County Assessor.

VERIZON CALIFORNIA INC. v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2011-00116029

Filed – 12/21/11

BOE's Counsel

Jill Bowers

BOE Attorney

Kiren Chohan

Plaintiff's Counsel

Carla Christofferson

O'Melveny & Myers LLP

Issue(s): The issue in this case is whether plaintiff's 2007 Board-adopted unitary value of \$3,480,700,000 is overstated. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2007

Amount: \$5,900,000.00

Status: Verizon served BOE with a Verified Complaint for Refund of State Assessed Property Taxes

dated December 22, 2011. BOE's response to Verizon's First Amended complaint was due and filed October 23, 2012. A hearing is set for March 12, 2013.

WESTERN STATES PETROLEUM ASSOCIATION v. California State Board of Equalization

Los Angeles County Superior Court Case No. BC403167

Filed – 12/03/08

Court of Appeal, Second Appellate District No. B225932

California Supreme Court, Case No. S200475

Plaintiff's Counsel

Cris K. O'Neill

Cahill, Davis & O'Neill, LLP

BOE's Counsel

Brian Wesley

BOE Attorney

Kiren Chohan

Issue(s): Whether BOE's Property Tax Rule 474 is valid ([Government Code section 11340](#) et seq.; [Revenue and Taxation Code section 51](#); [Government Code section 15606](#); Title 18 California Code of Regulations, sections 461 and 324; [California Constitution Article III, section 1](#); and [Article XIII A sections 1, 2, and 3](#).)

Audit/Tax Period: None

Amount: Unspecified

Status: On March 29, 2010, the court issued its Order on Submitted Matter denying SBE's Motion for Summary Judgment and granting summary judgment to WSPA. Judgment in favor of plaintiff was entered April 27, 2010. BOE's Appellant's Reply Brief was filed on August 12, 2011. The case has been fully briefed, and oral argument was held on November 21, 2011. On January 19, 2012, the Court of Appeal declared Rule 474 to be invalid.

Supreme Court: BOE's Petition for Review with the Supreme Court was filed on February 28, 2012. On May 16, 2012, the Supreme Court granted BOE's Petition for Review of the Court of Appeal decision. The case is currently being briefed in the Supreme Court. BOE filed its reply brief on January 22, 2013. Case is now fully briefed.

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NONE

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